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HISTORY OF INTERNATIONAL LAW SINCE THE PEACE OF WESTPHALIA

The main factors in the growth of the science of international law

The treaties of Münster and Osnabrück gave to Europe a sort of international constitution which remained the basis of its public law down to the French Revolution. But it would be a serious error to assume that the international community of states as revealed to the world by the Peace of Westphalia implied the recognition of the science of international law as understood and practiced by the society of nations at the present time. The science of international law as it exists today is a result of slow historical growth and is the product of two main factors, *viz.*, certain theories or principles on the one hand, and international practice or custom on the other. The relative value and influence of the contributions of each of these factors is so difficult to determine that they have never been thoroughly sifted or separated — a task left for the future historians of international law.

The importance of jurists and publicists

It is clear, however, that during its formative period, international law was mainly developed by great thinkers and jurists who were forced to rely upon the weight of general ideas or theoretical considerations rather than upon any satisfactory body of accumulated custom if they desired to ameliorate conditions or improve international relations. The fundamental principles of the science once firmly established and recognized in international practice, there was less need for theoretical discussion. It now became the main function of the jurist and publicist to apply and interpret the law in conformity with the best and most authoritative precedents or usages.

Grotius as the founder of the science of international law

The founder of the *science* of international law was Hugo Grotius, whose main work, entitled *De jure belli ac pacis,* published in 1625

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during the midst of the horrors of the Thirty Years' War, marks an epoch in the history of civilization as well as of international law. Although it was based largely upon the labors of his predecessors [1] to whom somewhat scant recognition is given by him, Grotius deserves his title of "Father of International Law" from the fact that his was the only work which obtained wide circulation and general recognition [2] in the seventeenth century. This was because it answered the needs of the time, and was the fullest, most attractive, systematic and scholarly exposition of the subject hitherto attempted. Grotius brought to his work great learning, enthusiasm, experience, and a passion for justice which won for him the hearts as well as the heads of his contemporaries and of posterity.

This work based on the jus naturale

Like his predecessors and many of his successors, Grotius started from the idea of a universal and immutable law of nature (*jus naturale*) based upon right reason and human sociability — a philosophical conception derived from the Stoic philosophers of antiquity which has dominated ethics and jurisprudence until recent times. He claimed for the law of nations the authority and sanction

[1] For references and a brief sketch of the "Forerunners of Grotius," see note at the end of this article.

[2] This is shown by the facts that at least forty-five Latin editions of his book were issued prior to 1748 and that it had been translated into the leading modern languages before the close of the seventeenth century. See Rivier in 1 Holtzendorff, *Handbuch*, § 88, for list of editions. It made such a great impression upon Gustavus Adolphus that he is said to have slept with the work under his pillow during his campaigns in Germany.

Grotius was born at Delft, Holland, in 1583. As a child he was a prodigy, writing Latin verses at nine years of age. He entered the University of Leyden when twelve years old and took his degree of Doctor of Laws at Orleans, France, at the age of fifteen. As a result of religious controversy, he was sentenced to imprisonment for life in 1619; but in 1621 he succeeded in escaping from prison, and lived for ten years in Paris where he composed and published his great work in 1623–25. In 1634 he was appointed Swedish minister to France — a position which he held until the year of his death in 1645. Grotius was poet, philologist, philosopher, historian and mathematician, as well as diplomatist, lawyer and jurist.

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of this law of nature — a doctrine denied by no one in his day,[3] thus giving it an apparently solid, binding and rational character which few cared to dispute. Moreover, he fortified his position by an attractive style and a marvellous display of erudition or citation of authorities from men of all ages and countries (including the Bible, poets, orators, philosophers and historians, as well as jurists) which went far to enhance his authority in the eyes of his contemporaries. He also borrowed largely from the Roman *jus gentium,* the leading principles of which had been practically identified with those of the *jus naturale.* This " written reason," as the Roman Civil Law has been called, not only commanded the highest respect from its origin, but was sanctioned by general agreement, at least on the part of the educated classes; and Grotius thus relied upon positive law (*jus voluntarium*) as determined by general consent as well as upon the law of nature to give effect to the principles and usages of the law of nations.

The fundamental principles underlying the Grotian system

Many of the principles laid down and usages sanctioned by Grotius are obsolete; others are found only in germ or are incompletely developed; many present-day laws and customs (as *e. g.,* those making up the modern law of neutrality) were practically overlooked or received scant recognition from him; but the essential principles underlying the Grotian system remain the fundamental principles of international law. Such are the doctrines of the legal equality and territorial sovereignty or independence of states.[4]

These fundamental principles, though not clearly stated by Grotius, underlay his system and were fully developed by his suc-

[3] For references on the *jus naturale,* see note at the end of this article.

[4] The best recent estimates of Grotius' work are by Basdevant in *Les fondateurs de droit int.,* ed. by Pillet; Andrew White in *Seven Statesmen* (1910), 54–110; and Walker, *Science, etc.,* ch. 4.

For a very full analysis of the *jure belli ac pacis,* see Walker, *History,* §§ 143–148. The best modern translation is by Pradier-Fodéré (1867). It is preceded by a valuable biographical and historical essay.

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cessors, more especially by Wolff, Vattel, and G. F. de Martens. They were the inevitable outcome of the acceptance of the dogma of the supreme power or sovereignty of states and princes as defined by Bodin, Grotius, Hobbes, and other political philosophers during the sixteenth and seventeenth centuries.[5]

It only remained to apply this dogma to the international relations of the community of states recognized by the Peace of Westphalia. It was soon seen that if states and princes are sovereign and independent, they must also be regarded as equal before the law; and that it was necessary to formulate a doctrine of the fundamental rights and duties of states.

The successors of Grotius

The successors of Grotius, who wrote during the seventeenth and eighteenth centuries, may be divided into three schools — the "philosophical" or pure law of nature school, the "positivists" or historical school, and the "eclectics" or "Grotians."

The pure law of nature school

The pure law of nature school, headed by Pufendorf (1632–94), denied the existence of any positive international law based on custom and treaties, and maintained that the law of nations is wholly a part of the law of nature.[6] Pufendorf occupied the first chair which was

[5] Though differing widely from the latter, both in point of view and details, Grotius (*lib.* I, ch. 3, § 7) practically follows Bodin, who defines sovereignty as "supreme power over citizens and subjects, unrestrained by the laws." Dunning, *Political Theories from Luther to Montesquieu*, pp. 96 and 181. Bodin's great work *De Republica* was first published in 1576. Grotius has been severely criticised for his defense of the patrimonial state and his repudiation of the doctrine of popular sovereignty; but these views doubtless served to recommend his opinions to the absolute monarchs of his day.

[6] *De jure naturæ et gentium*, II, ch. 3, § 22. On this point Pufendorf followed Hobbes (*De Cive*, XIV, 4), who divided natural law into a "Natural Law of Men and a Natural Law of States," and maintained that the two were composed of identical precepts. In other words, states live in a state of nature in respect to each other. But Hobbes and Pufendorf differed widely in their views as to the sociable nature of man. Pufendorf, however, adopted Hobbes' imperative view of the nature of law.

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founded for the study of the law of nature and nations at a university (at Heidelberg, Germany, in 1661), but his *magnum opus* on *De jure naturæ et gentium* was not published before 1672 when he held the position of professor of jurisprudence at the University of Lund, in Sweden. His great service was his insistence upon the supreme importance of natural law at a time when customary law based on good usages was insufficiently developed.[7]

Pufendorf's most famous disciple was Thomasius[8] (1655–1728), a German philosopher who published his *Fundamenta juris naturæ et gentium* in 1705. Thomasius distinguished between perfect and imperfect duties — a distinction afterwards elaborated by Wolff.[9] Other important "naturalists" of the seventeenth and eighteenth centuries were: Barbeyrac (1674–1744), the famous French translator and commentator of the works of Grotius, Pufendorf and others; the Genevan Burlamaqui (1694–1748), whose *Principes du droit naturel et politique* was published in 1747; Thomas Rutherford who published his *Institutes of Natural Law* in 1754; and the French diplomatist De Rayneval (1736–1812), author of the *Institutions de droit de la nature et de gens.*[10]

The positive or historical school

The positive or historical school of international jurists, while not denying the existence and validity of the law of nature, emphasized the importance of custom and treaties as sources of international law. This school may be said to have originated in England where it has also attained its fullest development. One of Grotius' predecessors,

[7] The only parts of his work which deal with international law proper are the last five chapters of the eighth book.

[8] On Thomasius, see especially Andrew White in *Seven Great Statesmen* (1910), 113–61.

[9] Westlake, *Chapters*, p. 72.

[10] A belated pure "naturalist" has even appeared during the latter half of the nineteenth century — the Scotch professor Lorimer. He still defines the law of nations as the "law of nature realized in the relations of separate nations" or "political communities." See his *Institutes of the Law of Nations* (1883), I, pp. 1 and 19.

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the Italian Gentilis, who was appointed professor of civil law at Oxford in 1588, and whose chief work *De jure belli* was published in 1598, may in a sense be said to have been the founder of this school. At least he enriched his work with examples drawn from contemporary opinion and events — a practice which Grotius condemned — and he preferred historical investigation to abstract reasoning and systematic exposition.

Other representatives of this school in England during the seventeenth century were: the learned Selden [11] who, in a work entitled *Mare Clausum* (published in 1635), attacked Grotius' views on the freedom of the sea as expressed in the latter's *Mare Liberum* (published in 1609); Zouch (1590–1660), professor of civil law at Oxford and judge of the Admiralty Court, who published the first *manuel* of international law in 1650; [12] and Sir Leoline Jenkins, Zouch's successor as admiralty judge, whose opinions on questions of prize law are of great importance in the history of international maritime law.[13]

The three leading positivists of the eighteenth century were the famous Dutch jurist Bynkershoek and the German professors John Jacob Moser and G. F. von Martens.

Bynkershoek never wrote a treatise on international law, but he still ranks as one of its leading authorities.[14] Although he recognizes reason as an important source of the law of nations, he relies mainly

[11] In 1640 Selden also recognized the importance of a positive law of nations in a work on *Law of Nature and Nations among the Hebrews.*

[12] The influence of Zouch in England was very great. He was also the first publicist to use the term *jus inter gentes* in the title of his work; but he was not the inventor of this phrase, as generally stated. Victoria (see note at the end of this article) had employed it in the first half of the sixteenth century, and Grotius had made use of the phrase *jus inter civitates,* although the latter generally employed the ambiguous term *jus gentium.*

[13] It should not be forgotten that Germany also produced several representatives of the positive or historical school during the seventeenth century. Of these the most important was Rachel, who published two dissertations on *De jure naturæ et gentium* in 1676.

[14] The fame of Bynkershoek rests upon three books: *De dominio maris* (1702): *De foro legatorum* (1721); *Questiones juris publici* (1737). Wheaton (*History,* p. 193) says that Bynkershoek was "the first writer who has entered into a

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upon custom, as expressed in treaties and international practice (including unilateral acts) for actual guidance.

John Jacob Moser (1701–1785) was the author of innumerable works bearing mainly on international law,[15] which are perfect storehouses of historical facts and precedents. Moser was a thoroughgoing positivist, and his attitude toward the law of nature is one either of indifference or of contempt.

G. F. von Martens (1756–1821) also published numerous works dealing with positive international law, the most important of which was entitled *Précis du droit des gens moderne de l'Europe,* published in 1788. This work, which appeared in successive editions and has been translated into many languages,[16] has exercised a great influence upon international practice and the subsequent development of international law. Von Martens does not wholly repudiate the law of nature, based on reason and utility, but he admits it only in default of positive rules founded on usage and treaties. As the first systematic manuel on positive international law more or less adapted to modern needs, it became a model and still enjoys considerable reputation. G. F. von Martens is especially clear in his exposition of the fundamental rights and duties of states.[17]

critical and systematic exposition of the Law of Nations on the subject of maritime commerce between neutral and belligerent nations."

[15] Nys (1 *Droit Int.*, p. 257) states that in 1765 Moser had already composed 200 works and studies. His principal work, entitled *Versuch des Neusten Europäischen Völkerrechts in Friedens und Kreigszeiten* in ten volumes, was completed in 1780. It is said by Wheaton (*History*, p. 323) to contain a rich mine of materials. For a list of his principal works on international law, see Wheaton, pp. 324–25; and Rivier in 1 Holtzendorff's *Handbuch*, § 102.

[16] An English translation by Cobbett was published at Philadelphia in 1795. The best and most recent edition, with notes by Pinheiro-Ferreira and Vergé, appeared at Paris in 1864. Von Martens also began the celebrated collection of treaties which bears his name and which has been continued up to our own time. G. F. von Martens must not be confused with his nephew Charles de Martens, the author of the *Causes célèbres de droit des gens* (1827) and the *Guide diplomatique* (1832) or with the famous Russian jurist and publicist F. de Martens of our own day.

[17] See his *Précis*, liv. IV.

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The "eclectics" or "Grotians"

A third school of international jurists — the "eclectics" or "Grotians" — occupy a middle ground between the "naturalists" and "positivists." The members of this school followed in the footsteps of Grotius in preserving the distinction between the law of nature and the positive or voluntary law of nations, based on custom or consent; but, unlike their master, they have treated both as about equally important.

The greatest representatives of this school in the eighteenth century were the German philosopher Wolff (1679–1754) and his Swiss disciple Vattel (1714–67).

Wolff's greatest work in this field was a treatise on the *jus naturæ* (1740–48) in eight volumes. To this was added a volume on the *jus gentium* in 1749 and an abridgment of the whole entitled *Institutions juris naturæ et gentium* in 1750. Wolff's highly abstract and mathematical treatment of these subjects rendered his works practically unintelligible to those who might otherwise have profited by them.

The task of introducing Wolff's ideas to men of letters, statesmen and diplomatists was undertaken by Vattel, the famous Swiss publicist, whose influence on the conduct of international relations is perhaps second only to that of Grotius. Vattel tells us in the preface of his *Law of Nations*[18] that he had at first intended only to "clothe" certain portions of Wolff's system "in a more agreeable dress," but he soon found it necessary to compose a very different work. He, therefore, contented himself with "selecting from the work of M. Wolfius the best parts, especially the definitions and general principles." His book, though by no means an original contribution to the subject, is, indeed, far from being the mere abridgment or paraphrase of Wolff's treatise on the *jus gentium* that it is often represented. He accepts Wolff's doctrine of perfect and imperfect

[18] This famous work, which was published in 1758, bears the additional title: *Principles of the Law of Nature Applied to the Conduct and Affairs of Nations and Sovereigns.* It has had many editions and translations. The most complete and recent edition, with notes *variorum*, is that edited by Pradier-Fodéré in 1863.

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obligations, and emphasizes the fundamental rights and duties of states. He also adopts his master's complicated and impractical division of positive international law into the voluntary, customary, and conventional law of nations;[19] but he rejects the Wolffian fiction of a world state or *civitas maxima* as a foundation for the voluntary law of nations. Vattel wrote in an attractive style and enriched his work with illustrations drawn from the history of his own times.[20]

The period between 1648–1713

The period between 1648 and the Peace of Utrecht (1713) was marked by the aggressive policy of Louis XIV, resulting in a series of wars and conquests and a disturbance of the balance of power in Europe created by the Peace of Westphalia. This in turn led to the formation of the first great European coalition against France headed by England in 1688 — a date which also marks the beginning of what Seeley[21] calls the "Second Hundred Years' War" between England and France (1688–1815) which resulted in the conquest of the major portion of the French colonies by England and the establishment of the maritime supremacy of Great Britain. The War of

[19] In addition to these three classes of positive law, we have of course in the Wolffian, as in the Grotian system, the natural or necessary law which Vattel (*Preliminaries*, §§ 6–8) says "consists in the application of the law of nature to nations."

[20] Though not members of any particular school, the following eighteenth century publicists should receive special mention because of their influence upon the development of maritime law, more especially in connection with the law of neutrality: the Danish minister Hübner, whose important treatise entitled *De la saisie des batimens neutres* (Seizure of Neutral Vessels) was published in 1759; the French jurist Valin, whose excellent Commentary upon the *Marine Ordinance of 1681* and *Traité des prises* (Treatise on Prizes) appeared during 1760–63; Heineccius, who wrote his treatise *De navibus* in 1721 and *Elementa juris naturalis* which was translated into English in 1763; and the Italians Lampredi and Galiani who engaged in a famous controversy on the principles of the Armed Neutrality in the latter part of the eighteenth century. On these authors and this controversy, see Wheaton, *History*, espec. pp. 200, 219–229, and 309–322.

[21] *Expansion of England*, Lect. II, pp. 24 and 29. There was, however, a long period of peace, and even of alliance, between England and France between 1713–40.

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the Spanish Succession (1701–13) ended in the restoration and first formal acknowledgment of the balance of power as a fundamental principle of European policy.

During this period (1648–1713) lip-service was rendered to the leading principles and usages of the law of nature and nations laid down by Grotius and his successors, but its rules were often practically ignored. The rights and immunities of legations were generally recognized and became fully established; the doctrine of the freedom of the seas made considerable progress; and fixed rules were laid down regulating such matters as the right of visit and search, blockade, and the capture of contraband. In respect to the law of maritime capture a long backward step was taken.

The famous French Marine Ordinance of 1681 [22] admitted the maxim of the *Consolato del Mare* that enemy goods in a friend's vessel are good prize; but it denied the rule that the goods of a friend found on an enemy ship are free. It even declared that neutral vessels carrying enemy goods are liable to confiscation, thus limiting the lawful commerce of a neutral to his own goods carried in his own vessel.[23] With the exception of the latter rule, the principles laid down by the Marine Ordinance of Louis XIV may be said to have entered largely into the theory and international practice (both

[22] This ordinance was modelled on earlier ones. The law of France varied at different times. On the Marine Ordinance of 1681 and the maritime law of this period, see especially Wheaton, *History*, 107–161.

[23] Wheaton, p. 111. "Valin states that this jurisprudence, which prevailed in the French prize courts from 1681 to 1744, was peculiar to them and to the Spanish courts of admiralty, the usage of other nations being to confiscate the goods of the enemy only." *Ibid.*, p. 114. Bynkershoek (*Questiones juris publici, lib.* I, *cap.* 14) denies that the neutral ship carrying enemy goods might be condemned, but he admits that the goods are subject to confiscation. He also agrees with Grotius (*De jure belli ac pacis, lib.* III, *cap.* 6) that the rule that "goods found in enemies' ships are to be treated as enemies' goods, ought not be accepted as a settled rule of the law of nations, but as indicating a certain presumption which may be rebutted by valid proof to the contrary." Grotius adds: "And so it was judged in full senate by our Hollanders in 1338, when war was raging with the Hansa towns; and the judgment has become law." Some eighteenth century publicists like Hübner and G. F. de Martens declared that both neutral goods and enemies' ships and enemy goods on neutral ships were free; but their views were not generally accepted either in theory or practice.

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customary and conventional) of Europe during the seventeenth and eighteenth centuries.[24]

The eighteenth century

The most important events in the international relations of the eighteenth century were: the admission of Russia under Peter the Great to full membership in the circle of European states; the rise of Prussia under Frederick the Great as a first-rate Power; the declaration and achievement of American independence; and the outbreak of the French Revolution.

The colonization of America by the leading nations of Europe, which was begun on a large and effective scale during the seventeenth and continued during the eighteenth century, gave rise to new questions to which the Roman law of *occupatio* and *alluvium*

[24] It is extremely difficult to say what the law was either in general or at any particular time and place. The rules of the *Consolato* seem to have prevailed quite generally during the period extending from the thirteenth to the middle of the sixteenth centuries when France adopted harsher rules. About the middle of the seventeenth century, the Dutch began to secure the insertion of the rule of "free ships, free goods" into treaties, conceding in return the confiscation of neutral goods in belligerent vessels (enemy ships, enemy goods). This latter principle was regarded as a corollary of the former, thus reversing the maxims of the *Consolato del Mare*. Even England, which became the champion of the double doctrine of the *Consolato*, yielded these rules in a number of treaties. The United States, while advocating the adoption of the principle of "free ships, free goods" and incorporating it into most of their treaties, followed English precedents in their interpretation of the customary law, thus recognizing the right of capture of enemy goods in neutral vessels. On the other hand, our government and courts have always maintained that the goods of the neutral found in the vessel of an enemy are free. The leading case is that of *The Nereide* (1815), 9 Cranch, 388, espec. p. 418.

On this subject, which has become a mere matter of historical interest since the Declaration of Paris in 1856, see De Boeck, *De la proprieté ennemie sous pavillon ennemie* (1882); Bonfils-Fauchille, Nos. 1497–1526; Dupuis, *Le droit de la guerre maritime* (1899), ch. 2; Hall, Pt. IV, chs. 7 and 9; 2 Halleck (Baker's 3d ed.) 279–286; 2 Hautefeuille, *Des Droit des neutres*, Titre X; Kleen, *De la neutralité*, I, *Introduction-historique*, and II, 92–215; Lawrence, Pt. IV, ch. 4; Manning, Bk. V, ch. 6; 3 Phillimore, Pt. IX, ch. 10; 2 Ortolan, *Dip. de la ner, liv.* III, ch. 5; 2 Rivier, 429–30; Taylor, Pt. V, ch. 2; 2 Twiss, ch. 3; and 2 Westlake, 125–28.

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was applied. In Europe the main issues were dynastic, economic and territorial, and the principle of the balance of power based on an equilibrium of forces was repeatedly affirmed and violated. The diplomacy of this period was dominated by Machiavelian aims and methods.[25] The end was the glory and aggrandizement of dynasties and states; and to attain these ends all means seemed good. Treaties were violated whenever the interests of the state (*raison d'Etat*) appeared to demand it, and wars were undertaken on the slightest pretexts. Frederick the Great suddenly invaded Silesia upon the death of Charles VI, in 1740, within a few years after having written his "Anti-Machiavelli;" and of all the states which had guaranteed the pragmatic sanction of the Emperor, England alone (and she acted from motives of self-interest) kept faith with Austria upon the accession of Maria Theresa after the death of her father. But the greatest crime committed by the Machiavelian statesmen of the eighteenth century was the extinction of one of the most important members of the European family of nations — the three-fold division of Poland in 1772, 1793, and 1795.[26]

The Armed Neutrality of 1780

Early in 1780 the Russian Government laid down the following rules which were primarily directed against the maritime pretensions of England: 1) all neutral vessels may freely navigate from port to port;[27] 2) the goods belonging to the subjects of the Powers at

[25] On the Machiavelian character of the eighteenth century diplomacy, see espec. Sorel, *L'Europe et la Revolution Française*, I, particularly, ch. I.

[26] The first division of Poland has been characterized by Wheaton (*History*, p. 267) as the "most flagrant violation of natural justice and international law which has occurred since Europe first emerged from barbarism." Sorel (*op. cit.*, p. 89) remarks: "Two episodes summarized the custom of Europe on the eve of the French Revolution: the war of the Austrian Succession and the division of Poland." He calls these the "testament of old Europe," and declares that after this had been signed she could only die, leaving as a legacy the pernicious tradition of the abuses from which she perished.

[27] This is a denial of the famous Rule of 1756 which forbade neutrals to engage in the coasting trade of a belligerent, or in trade between a belligerent and its colonies when such trade is not permitted during peace. The rule is now prac-

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war shall be free in neutral vessels, except contraband articles; [28] 3) such contraband articles shall be restricted to munitions of war; 4) the denomination of blockaded port shall only be given to a port "where there is, by the arrangements of the Power which attacks it with vessels, stationed sufficiently near, an evident danger in attempting to enter it." [29] These principles were approved by France, Spain, the United States, and Austria, and were incorporated into the conventions of the League of Armed Neutrality of 1780, which was formed by Denmark and Russia and soon joined by Sweden, Holland, Prussia, Portugal, and the king of the Two Sicilies. In 1800 these principles were affirmed anew with some modifications and additions [30] by the Second League of Armed Neutrality consisting of Russia, Prussia, Sweden and Denmark.

tically obsolete. Whether it was ever good law is doubtful. The principle had been applied to the coasting trade before 1756, and was extended to the colonial trade during the Seven Years' and the Revoluntionary Wars. The great champion of the rule was England. The leading case is that of *The Immanuel*, 2 Rob. Rep. 186. On the *Rule of 1756*, see espec. Hall (3d ed.), § 234; 2 Kleen, § 175; Manning, Bk. V, ch. 5; 7 Moore, *Digest*, § 1180; 3 Phillimore, Pt. IX, ch. 11; and Wheaton, *History*, 217–19.

[28] See *supra*, note 24. This principle of "free ships, free goods" had also been asserted in 1752 by the Prussian commissioners who reported to Frederick the Great on the celebrated *Silesian Loan Controversy*. See Ch. de Martens, 2 *Causes célèbres, cause première*. For a good summary of this controversy between Great Britain and Prussia, see Wheaton, *History*, 206–17.

[29] Wheaton, *History*, 297–98. Upon the *Armed Neutrality of 1780*, see espec. Bergbohm, *Die Bewaffnete Neutralität* (1884); De Boeck, *De la propriété privé ennemie*, 55 ff; Fauchille, *La diplomatie française et la ligue des neutres de 1780* (1893); Manning, Bk. V, ch. 6, 325; 3 Phillimore, CLXXXVI ff; Wheaton, *History*, 295 ff.

[30] The main additional article adopted by the Second Armed Neutrality of 1800 affirmed that the "declaration of the officers, commanding the public ships which shall accompany the convoy of one or more merchant vessels, that the ships of his convoy have no contraband articles on board, shall be deemed sufficient to prevent any search on the convoying vessels or those under convoy." Wheaton, *History*, p. 399. It will be seen that several of the principles of the Armed Neutrality Leagues are still in advance of international law. They were, of course, far in advance of the times in which they were formulated. Though soon violated by some of the very nations which declared them, they do not deserve the cavalier treatment which they receive at the hands of several English

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The French Revolution

The outbreak of the French Revolution and the successful inauguration of the American Union, based on principles of democracy, nationality and federalism, mark a new epoch in the history of international relations, as of civiliation in general.

The Abbe de Saint-Pierre had presented the world with his "Project of Perpetual Peace" in 1713. Montesquieu taught that the law of nations is naturally based upon the principle that the various nations should do each other as much good as possible in times of peace; in war as little harm as possible, without injuring their true interests. Rousseau affirmed that war is not a relation between individuals but a relation between states. Mably, the author of an important work entitled *The Public Law of Europe Based on Treaties* (1748), advocated love for justice and humanity, respect for treaties, and the immunity of private property in maritime warfare.

The National Assembly of France solemnly declared on May 22, 1790, that "the French Nation renounces wars of conquest and will never use force against the liberty of any people." [31] But on November 19, 1792, the National Convention, abandoning the early principles of the Revolution, issued its famous decree that France "will grant fraternity and aid to all peoples who may wish to recover their liberty," [32] — a decree which was, however, abrogated on April 14, 1793, by one declaring in favor of non-intervention. The Jacobins incorporated the principle of non-intervention in their still-born con-

publicists. As Lawrence (*Principles*, 3d ed., p. 104) points out, "the controversies attending the formation, progress, and dissolution of the two great Leagues known as the Armed Neutralities of 1780 and 1800 did almost as much to clear up the question of neutral rights as the Alabama Controversy and the action of Washington in his second administration did to clear up the question of neutral duties."

[31] 2 Sorel, *L'Europe et la Rev. Française*, p. 89. This decree became part of *Tit.* VI of the Constitution of 1791. See Anderson, *Constitutions and Documents*, 93; and Helie, *Les Constitutions*, 293.

[32] 3 Sorel, *op. cit.*, 170. This decree was supplemented by that of December 15, 1792, proclaiming liberty and sovereignty to all peoples. See Anderson, *op. cit.*, No. 28, pp. 130–32.

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stitution of 1793.[33] On June 18, 1793, Abbe Gregoire presented a "Project for a Declaration of the Law of Nations" in twenty-one articles,[34] as a pendant to the "Declaration of the Rights of Man" of 1789. It contained few principles which are unsound. Some of them form part and parcel of the fundamental rights of states; others belong to the international law of the future; only a few are impracticable. This project, which has been characterized as Utopian, was rejected by the convention; but it may nevertheless be regarded as expressing the altruistic and idealistic spirit of the French Revolution in its attitude toward foreign nations. As in the case of the "Declaration of the Rights of Man," its great defect was that it contained no declaration of *Duties*.

The revolutionary and Napoleonic era

Like historical Christianity, the French Revolution proved false to its principles, and France entered upon a career of aggression and conquest which culminated in the short-lived Napoleonic empire (1804–14), embracing the greater part of central and southern Europe. As in the case of the aggressions of Louis XIV, Great

[33] "The French people declares itself the friend and natural ally of free peoples; it does not interfere in the governments of other nations; it does not allow other nations to interfere in its own." Arts. 118–119 of the Const. of 1793. Anderson, No. 39, p. 183.

[34] The more important of these articles are as follows:

Art. 2. The peoples are independent and sovereign. . . .

Art. 3. A people should do to others as it would have them do to it. . . .

Art. 4. The peoples should do each other as much good as possible in times of peace; in war, the least harm possible.

Art. 5. The particular interest of a people is subordinate to the general interest of the human family.

Art. 6. Every people has a right to organize and change its government.

Art. 7. A people has not the right to intervene in the government of others.

Art. 10. Each people is master of its territory.

Art. 15. An enterprise against the liberty of one people is a criminal attempt against all the others.

Art. 21. Treaties between the peoples are sacred and inviolable.

For the full text of this remarkable declaration, see Nys, *La Revolution française et le droit int.* in *Etudes*, II, 395–6; and I Rivier, pp. 40–41.

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Britain headed a series of coalitions against Napoleon I which ended in his downfall and the reduction of France to her former boundaries. During the period of the gigantic revolutionary and Napoleonic struggles (1792–1815), fundamental principles and customs of international law, more especially of maritime law, were set at naught by both France and England, and the rights of neutral commerce were violated in the most outrageous manner. Napoleon, through his Berlin and Milan decrees of 1806 and 1807, not only declared the whole British Isles to be in a state of blockade and interdicted all commerce and correspondence with them, but ordered that all vessels sailing to or from any port in the United Kingdom or its colonies should be confiscated.[35]

The British Orders in Council declared all French ports, together with those of her allies, to be in a state of blockade, and ordered the confiscation of any neutral vessel carrying " certificates of origin " — a device for distinguishing between British and neutral goods. These measures taken together threatened the destruction of all neutral commerce. These abuses called forth the protest and opposition of the United States, which become the main champion of neutral rights and duties at the beginning of Washington's administration in 1793 — a position which she has since, on the whole, maintained.[36]

[35] The " Continental System " of Napoleon was only a continuation of a policy begun under the First French Republic. "Already in 1793 England and Russia interdicted all navigation with the ports of France, with the intention to subdue her by famine. The French Convention answered with an order to the French fleet to capture all neutral ships carrying provisions to the ports of the enemy or carrying enemy goods." 1 Oppenheim, § 46. For details, see Mahan, *Influence of Sea Power upon the French Revolution and Empire*, II, ch. 17; and Wheaton, *History*, 372 ff.

On Napoleon's *Continental System*, see Manning, *Law of Nations*, Bk. V, ch. 10; and the vast Napoleonic literature, especially Fournier, Rose, Sloane, Lanfrey, etc. Perhaps the best accounts are those by Mahan, *op. cit.*, ch. 18; and Henry Adams, *History of the U. S., passim*, particularly Vol. IV, ch. 4.

For the documents bearing upon the System, see Anderson, *Constitutions and Documents*, No. 77, and the University of Pa. *Trans. and Reprints*, Vol. II, No. 2, 17–26.

[36] For good accounts of the efforts of the United States to maintain and enforce neutrality during the Revolutionary and Napoleonic period, see Wheaton, *Int. Law* (Dana's ed.), note 215; Moore, *Am. Diplomacy*, chs. 2 and 3; Henry Adams, *History of the U. S., passim.*

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Though a period of conquest, violence and reaction, it must not be forgotten that the French under Napoleon virtually destroyed old feudalistic and absolute Europe, and sowed the seeds of democracy and nationality which eventually bore fruit [37] in a new and in part rejuvenated and regenerated Europe.

The Congress of Vienna

The balance of power in Europe was once more restored at the reactionary Congress of Vienna in 1814–15.[38] Though largely basing its work upon the principles of legitimacy [39] and ignoring the powerful forces of democracy and nationality, this congress nevertheless established a new political order in Europe and settled some important questions of international law. It defined the relative rank of ministers, envoys and ambassadors; declared in favor of the abolition of the African slave trade; and agreed upon general principles intended to secure freedom of navigation on great international rivers, at least by co-riparian states.

Among the political acts of the Congress of Vienna should be particularly noted: the union of Norway and Sweden and of Belgium and Holland; the reorganization and neutralization of Switzerland; the reorganization of the new Germany of 39 States into a loose confederacy; and, in general, the restoration of the old dynasties in France, Spain, Italy and Germany.[40]

[37] Especially fruitful were the Secularization and Mediation Acts which reduced the number of German States to thirty-nine, and prepared the way for Bismarck's work of unification and reorganization in Germany.

[38] On the *Congress of Vienna*, see especially Debidour, *Histoire diplomatique de l'Europe*, ch. 11, 2 Fyffe, *History of Modern Europe*, ch. 1; Rose, *Revolutionary and Napoleonic Era*, ch. 11; Seignobos, *Histoire politique de l'Europe contemporaine* (Eng. trans. 1899), ch. 1; Stephens, *Revolutionary Europe*, ch. 11; Wheaton, *History*, 424–506. See also Hazen, *Europe since 1815*, ch. 1 and pp. 738–39, for select bibliography.

[39] But this principle was not thoroughly and consistently applied, *e. g.*, in Sweden and Germany.

[40] The main lines of this restoration of Europe were laid down by the allies in the treaty of Chaumont of March 1, 1814.

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The period of reaction (1815–48)

Under the deadening influence of the Metternich system,[41] the reaction continued for a generation (1815–48) after the close of the Congress of Vienna. Yet there was progress even during this oppressive regime.

The Holy Alliance.

In 1815 the Emperors of Russia and Austria and the King of Prussia formed what is generally known as the Holy Alliance,[42] pledging themselves to apply the precepts of Christianity, *viz.*, fraternity, justice, charity and peace, to the conduct of international as well as internal affairs. But much more important than this paper alliance based on mere sentiment and vague aspirations possibly cloaking ulterior designs, was the renewal of the Quadruple Alliance the same year between Russia, Austria, Prussia, and England. In Article 6 it was decided "to hold periodical meetings consecrated to great common objects, and to concert measures for the repose and prosperity of the peoples." [43]

The Concert of Europe

This alliance marks the beginning of the European Concert which undertook to suppress revolutions, maintain the treaties of Paris and Vienna, and regulate the affairs of Europe generally. It marks an attempt to substitute for the old European states-system or community of nations a new society or confederacy which should be under the control or dictatorship of a committee of the Great Powers. In 1818 it was joined by France and became known as the Pentarchy, but a rift in the alliance soon showed itself when England and France refused to sign the Troppau Protocol of 1820.[44] England

[41] On "Europe under the Metternich System," see espec. Seignobos, *Pol. History of Europe*, ch. 25; and Hazen (see index and bibliographies).

[42] For the text of the *Holy Alliance*, see the University of Pa. *Trans. and Reprints*, Vol. I, No. 3, p. 940. For a good summary, see Hazen, 14–16.

[43] Phillips, *Modern Europe*, p. 19; or Hazen, 16 ff.

[44] The Protocol of Troppau was an extension to Europe of the reactionary

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withdrew altogether at Verona in 1822. At Aix-la-Chapelle (1818) the Powers declared for the first time that it was their "unalterable determination never to swerve from the strictest observance of the principles of the law of nations, either in their relations with one another or with other states." [45] In pursuance of their policy of intervention — a principle to which England never assented — they held a series of congresses (1818–22)[46] which authorized interventions in Naples, Piedmont, and Spain.

The Monroe Doctrine

When, however, it was proposed to extend this system to the Spanish colonies in America which had achieved their independence, the President of the United States, acting upon a hint from the great British statesman Canning, interposed and promulgated the famous Monroe Doctrine in his annual message to Congress of December 2, 1823. He declared that "we should consider any attempt on their part (*i. e.,* of the Allied Powers) to extend their system to any portion of this hemisphere as dangerous to our peace and safety." He added:

With the existing colonies or dependencies of any European Power we have not interfered and shall not interfere. But with the Governments who have declared their independence and maintained it, and whose independence we have, on great consideration and just principles, acknowledged, we could not view any interposition for the purpose of oppressing them, or controlling in any other manner their destiny, by

Carlsbad Decrees which had struck such a severe blow at freedom in Germany. It declared that the "States which had undergone a change of government due to revolution, the results of which threaten other States, *ipso facto,* cease to be members of the European Alliance, and remain excluded from it until their situation gives guaranties for legal order and stability."

For the text of the *Carlsbad Decrees* and *Troppau Protocol,* see Univ. of Pa. *Trans. and Reprints,* Vol. 1, No. 3, pp. 16–24. For good accounts, see Phillips, pp. 73 and 96; and Hazen, 59–60.

[45] For the text of this declaration, see Nys on *Le Concert European* in 2 *Etudes,* p. 27.

[46] It is to the work of these congresses and the system represented by them that the term "Holy Alliance" has been usually applied.

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any European Power in any other light than as the manifestation of an unfriendly disposition toward the United States.[47]

The promulgation of the Monroe Doctrine, which was followed by the recognition of the independence of the Latin American states by England, definitely added to the society of nations the leading states of South America and Mexico.[48]

The system and principles of the so-called "Holy Alliance" were finally overthrown by the revolutions of 1830 and 1848 which, though followed by a period of reaction, eventually substituted the principles of nationality, democracy and constitutional rule for those of legitimacy and absolutism.

The Declaration of Paris of 1856

The next important step in the development of international law was taken at the close of the Crimean War in 1856. Not only was

[47] 2 Richardson, *Messages and Papers of the Presidents*, 218.

In another part of this same message (p. 209), Monroe also declared that "the American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European Powers." This part of the message was directed primarily against the encroachments of Russia in the Northwest.

Perhaps the best and most inclusive statement of the American policy is contained in a letter by Jefferson to Monroe, dated October 24, 1823: "Our first maxim should be, never to entangle ourselves in the broils of Europe. Our second, never to suffer Europe to intermeddle in cis-Atlantic affairs."

On the Monroe Doctrine, see especially Dana's note 36 to Wheaton's *Int. Law;* Barral de Montferrat, *De Monroe à Roosevelt* (1905); Beaumarchais, *La Doctrine de Monroe* (1898); Edginton, *The Monroe Doctrine* (1904); Ford in 7 *Am. Histor. Rev.*, 676–96; Henderson in *American Diplomatic Questions* (1901), Pt. IV; Moore in *American Diplomacy*, ch. 6; 6 Moore's *Digest*, ch. 20; Petin, *Les Etats Unis et la Doctrine de Monroe* (1900); Reddaway, *The Monroe Doctrine* (1898); Snow, *Am. Diplomacy*, Pt. II; Turner, *Rise of the New West*, in 14 Am. Nation Series, ch. 12. A good appreciation of the Monroe Doctrine is also contained in Moulin's excellent work on *La Doctrine de Drago* (1909). For a good select bibliography, see Hart, *Manuel*, pp. 61–62 and 246–48.

[48] Their recognition by the United States took place in the spring of 1822; by England early in 1825. See Paxson, *The Independence of the South American Republics* (1903).

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Turkey expressly admitted to theoretical full standing as a member of the society of nations, but the Congress of Paris issued the following epoch-making declaration of leading principles of maritime international law:[49]

1) Privateering is and remains abolished.
2) The neutral flag covers enemy's goods, with the exception of contraband of war.
3) Neutral goods, with the exception of contraband of war, are not liable to capture under an enemy's flag.
4) Blockades, in order to be binding, must be effective; that is to say, maintained by a force sufficient really to prevent access to the coast of an enemy.

The period since 1856

The half century beginning with the Declaration of Paris in 1856 and ending with the London Conference in 1909 has seen greater progress in the direction of internationalism and more successful attempts to improve and codify international law than any other in history, or perhaps more than all previous half-centuries combined. It has been a period of congresses and conferences,[50] of international unions and associations with definite organs in the shape of com-

[49] The Declaration of Paris was signed on April 16, 1856, by all the Powers represented at the Congress, *viz.*, England, France, Austria, Russia, Sardinia, Turkey, and Prussia. The states not represented at the Congress were invited to sign, and most of them did so before the end of the year. Japan signed in 1886. The United States, Spain, Mexico and a few minor states held out, but all have in practice observed the rules of the Declaration. Spain gave notice of her adhesion at the Hague Conference of 1907. The objection of the United States was based upon the idea that inasmuch as we did not possess a large navy, the right to fit out privateers must be retained until the capture of private enemy property at sea is abolished. Inasmuch as this condition no longer holds and all the maritime Powers have observed the rules laid down by the Declaration of Paris for at least fifty years, there is no longer any reason for denying or doubting their validity as international law.

On the *Declaration of Paris*, see especially Dana's note to Wheaton; and Higgins, *The Hague Peace Conferences* (1909), 1–4.

[50] All real distinction between the words Congress and Conferences, if such ever existed, seems to have been lost.

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missions and bureaus which are rapidly developing a sort of international legislation and an international administrative law.

Although the principle of nationality won its greatest triumphs during this period in the achievement of Italian and German unity (1859–70), it seems that the spirit of nationality is being modified or supplemented by that of internationalism, and that the older conceptions of sovereignty and independence are yielding to ideals of interdependence.

Codification of the law of nations

The first important step towards the codification of the laws of land warfare was taken in 1863 when our government published the "*Instructions for the Government of Armies of the United States in the Field*" prepared by Dr. Francis Lieber.[51] In 1864 there was concluded, on the initiative of Switzerland, the Geneva Convention for the Amelioration of the Condition of the Wounded in War.[52] This convention, which provided for neutralization of persons and things connected with the care of the sick and wounded, was signed by nearly all civilized Powers. By the Declaration of St. Petersburg of 1868 many states renounced, in case of war between themselves, the use of any "projectile of less weight than 400 grammes (about 14 ounces) which is explosive, or is charged with fulminating or inflammable substances."[53]

[51] The *Instructions* are printed as an Appendix in Scott's *Texts of the Hague Conferences*, and as an Appendix in Wilson's *International Law*.

[52] For the text of the Geneva Convention (including the Additional Articles of 1868), see Higgins, *The Hague Peace Conferences*, 8–17; Whittuck, *Int. Doc.*, 3–9; or 1 SUPPLEMENT to this JOURNAL (1907), 90–95. But the Additional Articles failed of ratification. The convention resulted from an agitation aroused by the indefatigable labors of M. Moynier and the publication of a book entitled *Un Souvenir de Solferino* by M. Dunant, a Swiss philanthropist, who had witnessed the terrible sufferings of the wounded in that battle (1859).

[53] This was based on the principle that the only legitimate object of war "is to weaken the military force of the enemy; that for this purpose it is sufficient to disable the greatest possible number of men; that this object would be exceeded by the employment of arms which uselessly aggravate the sufferings of disabled men, or render their death inevitable." See preamble of the *Declaration* in Higgins, 6; Whittuck, 10.

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The London Conference of 1871

In 1871 the Conference of London [54] solemnly proclaimed "that it is an essential principle of the law of nations that no Power can liberate itself from the engagements of a treaty, or modify the stipulations thereof, unless with the consent of the contracting Powers by means of an amicable agreement." But it is very doubtful whether, stated in this absolute form, the above declaration is a principle of international law.

The Brussels Conference of 1874

In 1874 the Brussels Conference [55] presented the world with a code of warfare which, although it failed of ratification, obtained great authority and was generally observed. It was largely based on the American "Instructions" and became in its turn the model for the Hague code of 1899.

The West African Conference

The next important conference was that of the West African Conference which met in 1884–5 to decide certain questions concerning the Congo Free State, whose independence it recognized. This conference, at which the United States was represented, stipulated for freedom of trade and travel within the Congo basin; agreed to "strive for the suppression of slavery, and especially of the negro slave

[54] This conference was attended by representatives of the same Powers which had signed the Treaty of Paris of 1856 — an agreement which Russia had violated by reestablishing her maritime arsenal on the Black Sea upon the outbreak of the Franco-German War of 1870.

[55] For the text of the *Code of the Brussels Conference*, see Higgins, 273–80; Wilson and Tucker, *Int. Law*, 384–94 (Appendix III); SUPPLEMENT to this JOURNAL (1907), 96–103; or Scott, *Texts of the Two Hague Conferences*.

The Brussels Conference was attended by delegates from fifteen European states. Owing to a misunderstanding, the United States was not represented. The Latin American states were not invited, and several delegates from South American states were refused admission. See Nys in 2 *Etudes*, 39–40. On the *Brussels Conference*, see espec. Holland, *Studies*, 59–78; and F. de Martens, *La Paix et la Guerre* (1901), 73–132.

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trade;[56] engaged to respect the neutrality of the Congo territories; and the signatory Powers obligated themselves to preserve reasonable order in the territories occupied by them, as also to notify one another of any future occupations or the establishment of future protectorates on the coast of the African continent.

International unions and congresses

The period since 1850 has also been characterized by a remarkable number and variety of international unions and conferences,[57] both public and private, dealing with economic, social, and sanitary matters. Beginning with the first International Sanitary Conference held at Paris in 1851,[58] we have a long succession of official international congresses dealing with all sorts of subjects, such as statistics, sugar duties, weights and measures, monetary matters, international postal and telegraphic correspondence, navigation of rivers, the metric system, submarine cables, private international law,

[56] Art. 6 of the "General Act of the Conference of Berlin Concerning the Congo," which is printed in the SUPPLEMENT to this JOURNAL (1909), No. 1, pp. 7–25. This Act was signed by the leading maritime Powers, the United States, and a number of the minor European states (including Turkey) — fourteen in all.

It was afterwards supplemented by the Conference of Brussels of 1890, attended by seventeen states (including the additional states of Persia, Zanzibar and the Congo), which agreed upon a "General Act for the Repression of the African Slave Trade and the Restriction of the Importation into, and Sale in, a certain defined Zone of the African Continent of Firearms, Ammunition and Spiritous Liquors." For the text of this Act of 100 Articles, see SUPPLEMENT, *op. cit.*, 29–59.

On the "Origin of the Congo Free State," see an interesting article by Jesse S. Reeves in this JOURNAL (1909), 99–118.

[57] For a list of 116 such congresses or conferences of an official character since 1850, compiled by the Hon. S. E. Baldwin, see this JOURNAL (1907), 808–817. It is followed by a list (pp. 818–29) of nearly 200 international congresses, conferences or associations, composed of private individuals. These lists must be far from complete, for there are said to have been over 160 international congresses during the year 1907 alone.

[58] At this conference twelve Powers were represented. There have been many subsequent International Sanitary Conferences. "In the one field of sanitation and medicine there are at least twenty separate international organizations." Professor Reinsch in New York *Independent* for May 13, 1909.

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protection of industrial property, railroad transportation, commercial law, international copyright, regulation or suppression of the liquor traffic in certain places, customs duties, promotion of the interests of the working classes, abolition of the slave trade, protection of labor in mines and factories, international arbitration, fisheries, repression of epidemic diseases, international telephony, suppression of the "white slave" traffic, international wireless telegraphy, agriculture, etc.[59]

The most important of these are perhaps the Conference on Telegraphic Correspondence which met at Paris in 1865 and formed the Universal Telegraph Union; the Universal Postal Union founded in 1874; the European Union of Railway Freight Transportation (1890); the Union for the Protection of Industrial Property, *i. e.*, patents, trademarks, etc., created in 1883; the Hague Union of 1886 for the Protection of Works of Art and Literature; the four Hague Conferences (between 1893 and 1904) on Private International Law; and the four Pan-American Congresses which have been held since 1890.

Many of these unions[60] are endowed with permanent organs of legislation and administration. Their legislative organ may be said

[59] In addition to the lists referred to above, see the articles on "International Conferences" and "International Unions" by Governor Baldwin and Professor Reinsch in this JOURNAL (1907), pp. 569–623. For general references, see pp. 582 and 602 and Bonfils-Fauchille, note, pp. 496–7. The main authorities are Decamps, *Les Offices internationaux* (1894); Moynier, *Les bureaux internationaux* (1892); Van Overbergh, *L'association int.* (1907); Poinsard, *Droit int. conventional* (1894); *ibid., Les Unions et ententes internationales* (2d ed. 1901); *ibid., Le droit int. au XXe siecle* (1907); Meili, *Die internationalen Unionen* (1885–89) in several volumes; and Reinsch, *Public International Unions, their work and organization* (1911).

Very few writers on international law devote much space to this subject. Exceptions are Bonfils-Fauchille, Nos. 914–928; 2 Mérignhac, *Traité*, 688–732; Liszt, §§ 16–17, 28–30, 33–36; 2 Nys, *Le Droit Int.*, sec. VIII, ch. 8; 1 Oppenheim, §§ 458–71, 578–91; Ullmann, § 58. The Russian F. de Martens, *Traité*, devotes two whole volumes (II and III) to what he calls "*International Administration;*" but his whole system is erroneous. He classifies the right of embassy, private international law and war and neutrality under this head.

[60] There are said to be over thirty public or official international unions.

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to be the conference or congress where unanimity is the general rule, but to which there are exceptions. The administrative organs are commissions and bureaus.[61] One result of the activities of these various organs will doubtless be the development of the science of international administrative law — a branch of international jurisprudence which is still in its infancy.

International arbitration

The practice of international arbitration, which had greatly declined at the close of the Middle Ages and which had almost disappeared from international usage during the seventeenth and eighteenth centuries,[62] may be said to have been revived by the Jay treaty of 1794 between England and the United States, which provided for the reference of several questions to arbitration. But it was not until the smoke had cleared away from the battlefields of the revolutionary and Napoleonic wars that the practice of arbitration spread or became more or less general. This movement, which had become a subject of international agitation, begun in the United States and England, was given a great impetus [63] through the successful arbitration of the Alabama claims by the Geneva Arbitration of 1872. Since then arbitrations and arbitration treaties seem to have

[61] The commissions are generally composed of representatives of the members of the unions and sometimes exercise a sort of control or supervision over the bureaus, many of which are located at Berne, Switzerland.

On this subject, see especially the excellent article entitle *Administrative Law and National Sovereignty* by Professor Reinsch in this JOURNAL (1909) 1–45.

[62] This fact was doubtless largely due to the absolute monarchs of this period who, ruling by divine right, were unwilling to submit their cause to any other than the God of hosts.

[63] In 1828 the American Peace Society was founded by William Ladd of Massachusetts. In 1840 he published his prize essays on *A Congress of Nations*, which contained a notable project of a "Court of Nations" as well. For a good description of his work, see an address by J. B. Scott in 70 *Advocate of Peace*, 196–200.

The first American peace association appears to have been founded by David L. Dodge in New York in 1815. The London Peace Society was founded in 1816.

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increased in a sort of arithmetical progression,[64] and they have been particularly numerous since a new epoch in the history of internationalism was ushered in by the work of the Hague Peace Conferences of 1899 and 1907.

Limitation of armaments

In the latter part of the nineteenth century a kindred movement in favor of a limitation of armaments was making considerable headway. Ever since the Franco-German War of 1870, as a result of a Machiavelian statecraft combined with that policy of "blood and iron" which Bismarck has left as a heritage to modern Germany, and as a consequence of the new colonial and commercialism [65] which

[64] For a very complete account of the arbitrations to which the United States had been a party up to 1898, see Moore's monumental *History and Digest of Tribunals*, in five volumes. Darby (*Int. Tribunals*, 4th ed., 1904, pp. 769 ff) gives a list of 228 instances of "formal" arbitration between 1794 and 1901. Of these there were 91 cases prior to 1872 and 137 between 1872 and 1901. The United States was a party in 62 cases; Great Britain, 81; France, 28; Prussia or Germany, 17; Russia, 8. Many of these arbitrations were with or between Latin American states, where this movement has made great progress. (On "Arbitration in Latin America," see a book by Quesada published in 1907.) La Fontaine (*Histoire Sommaire*) gives a list of 177 instances between 1794 and 1900. Darby also gives a list of 249 instances of arbitration less formal in character (*i. e.*, by boards of commissions) during the same period. He cites 21 instances of formal arbitration and 39 of the less formal sort, during the first four years (1901–1904) of the twentieth century.

Prior to 1899 the number of arbitration treaties were, comparatively speaking, few in number, but they have greatly increased, especially since 1899. There were 64 such treaties between 1899 and 1907 and the number of arbitration treaties since the meeting of the first Hague Conference had mounted up to about 130 in 1908.

For a list of 67 arbitration treaties between 1900 and 1908, see this JOURNAL (1908), pp. 824–26. The United States has been a party to over 20 such treaties. Fried (*Die Moderne Friedensbewegung*, pp. 26–27) gives a list of arbitration treaties between 1899–1907. For bibliographies on arbitration, see Griffen, *List of References*, published by the Library of Congress (1908); La Fontaine (1904); and Olivart, *Bibliographie*, etc.

[65] The founder or apostle of this new imperialism appears to have been Lord Beaconsfield. It was not fully adopted by Germany until about 1890. See especially the chapters on "*National Imperialism*" and "*German Imperial Politics*" in Reinsch, *World Politics* (1900). For references, see his "Bibliographical Notes."

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has taken possession of leading nations (notably of Great Britain and Germany), Europe has been virtually transformed into an "armed camp." This policy has, indeed, preserved peace on the European Continent for a generation, but at a fearful economic, social, and moral cost to humanity.

The First Hague Peace Conference

With a view of "seeking, by means of international discussion, the most effectual means of insuring to all peoples the benefits of a real and durable peace, and above all, of putting an end to the progressive development of the present armaments," Czar Nicholas II of Russia[66] convened the First International Peace Conference which met at The Hague on May 18, 1899.[67]

The First Hague Peace Conference soon realized that even a limitation of the increase of military and naval expenditures was impracticable at that time, and devoted its chief energies to the secondary purpose for which it had been called, *viz.*, to devise means of securing "the maintenance of general peace."

Owing mainly to the opposition of Germany, the Russian plan of inclusive and limited compulsory arbitration was rejected; but the British and American plan of a so-called "Permanent Court of Arbitration"[68] was adopted in spite of the objections of the German Government, and arbitration was recommended "in questions of a judicial character, and especially regarding the interpretation of treaties."[69] A code of arbitral proceeding was also adopted and recommended.[70]

[66] Russian *Rescript* of August 24, 1898.

[67] Twenty-six states were represented. Of these, twenty were European; five (China, Japan, Persia, Korea and Siam) were Asiatic; and only two (the United States and Mexico) American.

[68] The so-called Hague Tribunal is not even a court; it is a panel or list from which judges may be chosen.

[69] Art. 16 of the arbitration treaty or first convention.

[70] The great advantage of such a code is that it facilitates arbitration. It is no longer necessary for governments to enter into long and tedious negotiations respecting the mode of procedure on the occasion of each controversy.

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In addition to the Convention for the Pacific Settlement of International Disputes, the Hague Conference of 1899 also agreed to two other conventions, three declarations, and expressed several wishes. Very important was the Convention Regulating the Laws and Customs of Land Warfare based on the work of the Brussels Conference of 1874. The conference also adapted the principles of the Geneva Convention of 1864 to maritime warfare. It "declared" against the launching of projectiles and explosives from balloons for five years; the use of projectiles the only object of which is the diffusion of asphyxiating or deleterious gases; and the use of "dum dum" bullets. The conference also expressed a series of six wishes in favor of consideration, at a subsequent conference, of questions relating to the rights and duties of neutrals; the inviolability of private (enemy) property in naval warfare; and the bombardment of ports, towns, and villages by a naval force. It even expressed a wish that the governments might "examine the possibility of an agreement as to the limitation of armed forces by land and sea, and of war budgets."

The Second Hague Peace Conference

Acting upon the request of the Interparliamentary Union which met at the St. Louis Exposition in 1904, President Roosevelt suggested the meeting of a Second International Peace Conference on September 21st of that year. In accordance with the terms of the resolution adopted at St. Louis, he recommended the following questions as proper subjects for consideration:

1) The questions for the consideration of which the Conference at the Hague expressed a wish that a future Conference be called.
2) The negotiation of arbitration treaties between the nations represented at the Conference to be convened.
3) The advisability of establishing an International Congress to convene periodically for the discussion of international questions.

Owing, however, to the continuance of the Russo-Japanese War until September 5, 1905, the outbreak of the Russian revolution which followed, and to the further delay caused by the meeting of the

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Third Pan-American Conference, the Second International Peace Conference did not meet at The Hague until June 15, 1907.[71]

President Roosevelt generously conceded the honor of convening the Second Hague Conference to Czar Nicholas II who, for obvious reasons, omitted "limitation of armaments" from the Russian program. But Great Britain insisted upon raising this question, and the United States was determined to ask for a consideration of the Drago Doctrine in a modified form, *i. e.*, the question of prohibiting the use of armed force for the recovery of contract debts unless arbitration is refused, or in case of failure to submit to an arbitral award.[72]

Owing mainly to the opposition of Germany, Austria, Japan, and Russia, the British Government failed in its attempt to secure a consideration of the question of a limitation of armaments or restriction of military expenditures. Germany even opposed the insertion of the words "more urgent than ever" in the resolution which was adopted confirming the resolution of 1899 relative to this matter.[73]

Though the Second Hague Peace Conference of 1907 failed in some respects to meet the expectations even of conservative international jurists, it must be admitted that it was, on the whole, a notable success. It has to its credit thirteen conventions or treaties, one declaration, three wishes, and several recommendations.

[71] Out of the 57 states claiming sovereignty, 44 Governments were represented at this conference. These included 18 Latin American states. The other two — Honduras and Costa Rica — were invited, and appointed delegates, but these did not take their seats. Asia was again represented by Japan, China, Persia and Siam. Korea, having been occupied by Japan, was refused admission. As in 1899, the vote of Montenegro was cast by Russia's representatives and Bulgaria was again permitted by Turkey to send delegates.

The number of delegates had increased from 100 in 1899 to 256 in 1907.

[72] On the Drago Doctrine, see especially Moulin, *La Doctrine de Drago* (1908); Drago in this JOURNAL (1907), pp. 692–726; and Hershey, *The Calvo and Drago Doctrines*, *ibid.*, 26–45. For the "Instructions" of December 20, 1902, by Señor Drago, the famous Argentine Minister and author of the Doctrine, see I SUPPLEMENT to JOURNAL, 1–6.

[73] The Conference of 1899 had declared itself of the "opinion that the restriction of military charges, which are at present a heavy burden on the world, is extremely desirable for the increase of the material and moral welfare of mankind;" and it had expressed a wish that the governments examine the question.

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The Final Act of the conference included the following conventions or treaties:

I) "Convention (of 97 articles) for the pacific settlement of international disputes" — a revision of the convention of 1899 dealing with this subject.

II) "Convention (of 7 articles) respecting the employment of force, for the recovery of contract debts" — the famous Porter resolution embodying a modification of the Drago Doctrine.

III) "Convention (of 8 articles) relative to the opening of hostilities."

IV) "Convention (of 56 articles) regarding the laws and customs of land warfare" — a revision of the Hague code of 1899.

V) "Convention (of 25 articles) regarding the rights and duties of neutral powers and persons in case of war on land."

VI) "Convention (of 11 articles) relative to the status of enemy merchant ships at the outbreak of hostilities."

VII) "Convention (of 12 articles) relative to the conversion of merchant ships into war ships."

VIII) "Convention (of 13 articles) relative to the laying of submarine mines."

IX) "Convention (of 13 articles) respecting bombardments by naval forces in time of war" — an application of the rules governing bombardment on land to naval warfare.

X) "Convention (of 28 articles) for the adaptation of the principles of the Geneva convention (of 1906) to maritime warfare" — a revision of the Hague convention of 1899 which had adapted the Geneva convention of 1864 to maritime warfare.

XI) "Convention (of 14 articles) relative to certain restrictions on the exercise of the right of capture in maritime warfare." This convention includes provisions relating to the inviolability of postal correspondence, the exemption from capture of vessels engaged in coast fishing, etc., and

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regulations regarding the disposition of the crews of enemy merchant ships captured by a belligerent.

XII) "Convention (of 57 articles with an Annex) relative to the establishment of an International Prize Court."

XIII) "Convention (of 33 articles) respecting the rights and duties of neutral powers in naval war." [74]

The conference renewed "for a period extending to the Third Peace Conference" the declaration of 1899 prohibiting "the discharge of projectiles and explosives from balloons or by other new methods of a similar nature." It also declared itself "in principle" in favor of obligatory arbitration,[75] and that certain "differences, and notably those relating to the interpretation and application of international conventional stipulations, are susceptible of being submitted to obligatory arbitration without any reservation."

A resolution, confirming that of 1899 in favor of the desirability of the limitation of military burdens was adopted; and "in view of the fact that military burdens have considerably increased in nearly

[74] For a table showing which states had signed the various conventions of the Second Hague Conference by June 20, 1908 — the final date set for signatures of the plenipotentiaries — see this JOURNAL (1908), 876–77; Higgins, 530–31; or 2 Scott, *The Hague Peace Conferences*, 528–31. All but one (Paraguay) had signed the Final Act. The greatest delinquents were China (which had only signed the declaration, the first convention, and the Final Act) and Nicaragua (which had only affixed her signatures to the Final Act). Nicaragua has since given her adhesion to nearly all the Hague conventions. The only conventions which fared badly were the Porter resolution which was only signed (and even then with many reservations) by thirty-four states; the convention on submarine mines which failed to receive the signatures of seven states (including Russia); the convention relative to the establishment of an International Prize Court, which was only signed by thirty-one states (Great Britain, Japan, Russia and Brazil being among the non-signatories); and the declaration prohibiting projectiles from balloons, which failed of seventeen signatures. The United States did not sign Conventions VI, VII, and XIII.

For a table showing ratifications, see this JOURNAL (1911), 769–70.

[75] The failure of the conference to agree upon a definite plan of obligatory arbitration was mainly due to the opposition of Germany and Austria. The proposition of the United States in favor of exclusive limited compulsory arbitration had thirty-five votes in its favor and only nine against it, with three abstentions. See Professor Hull's excellent article on "Obligatory Arbitration and the Hague Conferences" in this JOURNAL (1908), 731–42: and 1 Scott, ch. 7.

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all countries since the said year," [76] the conference declared it "highly desirable for governments to undertake again the serious examination of this question."

The Hague Conference of 1907 made the following notable recommendations and wishes: 1) A recommendation that the signatory Powers adopt and enforce a project or draft of a "Convention (of thirty-five articles) for the organization of a Court of Arbitral Justice" [77] as soon as they shall have reached an agreement upon the selection of judges and the constitution of the court. 2) A wish that "in case of war the proper civil and military authorities make it their very special duty to insure and protect the maintenance of peaceful intercourse, and notably the commercial and industrial relations, between the peoples of the belligerent states and of neutral states." 3) The wish that "the Powers settle, through special conventions, the situation in respect to the support of the burden of military occupations by foreigners resident within their territories." 4) The wish that "the elaboration of regulations relative to the laws and customs of maritime warfare may figure in the program of the next conference, and that in any case, the Powers apply, as far as possible, to maritime warfare the principles of the Convention

[76] They have gone on increasing since 1907. It would be "highly desirable" to recommend action, or at least negotiation, on this subject at the next conference.

[77] This draft, which was mainly based on a project presented by the United States, was annexed to the first recommendation of the conference and is contained in the Final Act. It failed of adoption because of the opposition of many of the smaller states led by M. Ruy Barbosa of Brazil. It provides for a permanent court of competent judges (number not specified) "representing the various juridical systems of the world" appointed for a term of twelve years and capable of reappointment. These judges shall meet at The Hague once a year if necessary (in June), to decide pending cases and designate three judges to whom it delegates its powers. The Powers were unable to agree upon the constitution of the court and the apportionment of the judges.

For the text of this very interesting project, see 2 SUPPLEMENT to this JOURNAL (1908), 29–43; Higgins, *The Hague Peace Conferences*, 498–509; and Scott, *The Texts of the Two Hague Conferences*. See especially the admirable article on "The Proposed Court of Arbitral Justice" by J. B. Scott, the real author of the project, in this JOURNAL (1908), 772–810; and ch. 9 of 1 Scott's *Hague Peace Conferences*.

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Relative to the Laws and Customs of War on Land." 5) A recommendation that the Powers hold a "Third Peace Conference, which might take place within a period similar to that which has elapsed since the preceding Conference, on a date, to be set by joint agreement among the Powers." [78]

Aside from its inability to agree upon definite plans to secure a limitation of armaments, limited obligatory arbitration, and a real permanent Court of Arbitral Justice, the greatest failures of the Second International Peace Conference at The Hague were: its inadequate Convention Relative to Submarine Mines; its failure to provide a code of rules for the regulation of maritime warfare; and the unsatisfactory character of the Convention respecting the Rights and Duties of Neutral Powers in Naval War. An International Prize Court was agreed upon; but, owing mainly to the wide divergence between the Anglo-American and Continental systems of maritime jurisprudence, it was found impossible to agree upon a code of maritime law which should govern the decisions of the court.[79]

[78] The attention of the Powers was also drawn to the "necessity of preparing the labors of that Third Conference sufficiently in advance to have its deliberations follow their course with the requisite authority and speed." It was added:

"In order to achieve that object the Conference thinks it would be very desirable that a preliminary committee be charged by the governments about two years before the probable date of the meeting, with the duty of collecting the various propositions to be brought before the Conference, to seek out the matters susceptible of an early international settlement, and to prepare a program which the governments should determine upon early enough to permit of its being thoroughly examined in each country. The committee should further be charged with the duty of proposing a mode of organization and procedure for the Conference."

[79] On the Hague Conferences of 1899 and 1907, see especially Barclay, *Problems of Int. Practice and Diplomacy* (1907); Bustamenta y Sirvén, *La seconde Conferénce de la paix* (1909); Foster, *Arbitration and the Hague Court* (1904); Fried, *Die Zweiter Haager Konferenz* (1908); ‡Higgins, *The Hague Peace Conferences* (1909); ‡Holls, *The Peace Conference at the Hague* (1900); Hull, *The Two Hague Peace Conferences* (1908); De Lapradelle, *La Conference de la Paix*, in 6 R. G. D. I. (1899); ‡Lawrence, *Int. Problems and Hague Conferences* (1908); ‡Lémonon, *La seconde Conference de la Paix* (1908); Mérignhac, *La Conference de la Paix* (1900); Meurer, *Die Haager Friedenskonferenz* (1905); Nippold, *Die Fortbilding des Verfahrens* (1905); *ibid.*, *Die Zweite Haager Freidenskonferenz* (1908); ‡Scott, *The Two Hague Conferences* (1909); ‡Renault, *L'Oeuvre de la Hague* (1908). For a very complete bibliography, see De Lapradelle et Politis, in 16 *R. D. I. P.* (1909), 385–87.

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The Naval Conference of London of 1909

In order to find common meeting-ground on some of the most fundamental points of maritime law, a naval conference of the leading ten maritime Powers was held at London during the winter of 1908–09. This conference agreed upon a Declaration consisting of seventy-one articles embodying a code of rules regulating the rights of neutrals and belligerents with respect to neutral commerce. In importance these rules may be compared with those laid down in the famous Declaration of Paris of 1856. They contain important provisions relating to the law of blockade, contraband, continuous voyage, hostile aid or unneutral service, the destruction of neutral prizes, the transfer of the flag, enemy character, the right of convoy, etc.[80]

The science of international law during the nineteenth century

The history of the *science* of international law during the nineteenth century has never been written. All that can be indicated here are the general tendencies or lines of development and the names of some of the leading authorities.

It may be said that modern writers on international law are increasingly historical and positive, although certain abstract and theoretical tendencies are still very marked, especially on the Continent of Europe. The pure law of nature school has almost wholly

For the texts of the Conferences, see Higgins, *The Hague Peace Conferences;* Scott, *Texts of the Two Hague Conferences;* 2 Scott, *The Hague Peace Conferences;* Whittuck, *International Documents* (1908); and *Int. Law Situations* (1908), 117 ff.

[80] On the *London Naval Conference of 1909*, see especially Baty, *Britain and Sea Law* (1911); ‡Bentwich, *The Dec. of Lond.* (1911); Bowles, *Sea Law and Sea Power* (1910); Bray, *British Rights at Sea* (1911); Cohen in 27 *Law Quar. Rev.* (1911) and 26 *Rep.* I. L. A. (1911); *Correspondence*, etc., and *Proceedings* (*Cd.* 4554 and 4555, 1909); Dupuis *La guerre maritime*, etc. (1911); *ibid.*, in 18 *R. D. I. P.* (1911), 360 ff.; Harris in 56 *National Rev.* (1910), 393 ff.; Lawrence in 99 *Contemp. Rev.* (1911), 348 ff.; ‡Lémonon, *La Confér, Navale de Londres* (1909); Macdonnell in 11 *J. Soc. Compar. Leg.*, 68 and 26 *Rep.* I. L. A. (1911); Myers in this JOURNAL (1910), 4:571; ‡Niemeyer, *Das Seekriegsrecht* (1910); Oppenheim in 27 *Law Quar. Rev.* (1911), 372 ff.; Politis in J. D. I. P. (Clunet, 1909–10); Reinsch in 190 *No. Am. Rev.* (1909), 479 ff.; ‡Renault, *La Confér. Navale de Londres* (1909); Stockton in this JOURNAL (1910), *3*:196; Westlake in 67 *Nineteenth Cent.* (1910), 505 ff.; *Int. Law Topics* (1910).

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disappeared,[81] but publicists like Wheaton, Manning, Fiore, Pradier-Fodéré, Bonfils, and Piedèliévre still show the influence of ideas derived from the theories of natural law.

It is perhaps most useful and convenient to divide nineteenth century authorities according to nationality. The leading British treatises in chronological order, are those by Manning, Wildman, Phillimore, Twiss, Sheldon-Amos, Creasy, Hall, Maine, Lorimer, T. J. Lawrence, Walker, and Westlake. Other British writers who have materially contributed to the science of international law in the nineteenth century are Atherly-Jones, Baty, Barclay, Bernard, Cobbett, Harcourt (Letters by Historicus), Higgins, Holland, Phillipson, and Spaight. The British publicists are, in the main, overwhelmingly positivist and historical.

In any enumeration of British authorities, the name of Sir William Scott (later Lord Stowell), the founder of British maritime jurisprudence, deserves a place by itself by reason of the important judicial decisions and opinions of that eminent judge.

Among the authorities contributed by the United States are, (chronologically arranged): Kent, Wheaton, the elder Woolsey, Lieber, Halleck, Wharton, Field, Dana, W. B. Lawrence, Pomeroy, Snow, Moore, Davis, Wilson, Woolsey, Jr., Taylor, Stockton, J. B. Scott, Bordwell, Gregory, Hyde and Reinsch.* The judicial decisions of Judges Marshall, Story, and Gray are also of great importance. The American writers are essentially positivist, though perhaps more under the influence of Continental ideas than are British publicists. They are especially distinguished by impartiality and a certain freedom from the national bias which characterizes some of the British authorities.

The leading German and Swiss authorities since 1815 are Klüber, Heffter, Bluntschli, von Holtzendorff, Bulmerincq, Geffcken, Perels, Lueder, Ullman, Liszt, Oppenheim,[82] Stoerk, Nippold, and Meili.

[81] An exception is Lorimer. See note, *supra*, on p. 34.

[82] Oppenheim, a German publicist, who has recently succeeded Westlake as professor of international law at Cambridge, England, has published an important treatise in English. His point of view is, however, essentially Continental. Rivier

* The author modestly omits his own name, but the list would be incomplete without it. — J. B. S.

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The strong consciousness of military strength which followed the realization of German unity, together with the survival of Bismarckian methods and traditions, appears to have had a deleterious effect upon the development of international law in Germany since 1870, though evidence is not lacking that German publicists are recovering their former interest in this branch of jurisprudence. German idealism combined with German system and thoroughness must soon again place Germany in the front rank of contributors to our science.

If Germany has been losing, France has been gaining interest in international law during the same period. Except for the special studies and collections of Cauchy, Cussy, Hautefeuille, Ortolan, Pistoye et Duverdy, etc., the contributions of Frenchmen appear to have been comparatively slight and unimportant prior to 1870. Since then we have had important treatises by Funck-Brentano et Sorel, Pradier-Fodéré (in 8 volumes), Bonfils, Chrétien, Despagnet, Piédelièvre, and Mérignhac. There have also been valuable contributions by Dumas, Dupuis, Fauchille, Féraud-Giraud, De Lapradelle, Moulin, Pillet, Poinsard, Renault, Rey, and many others. The French publicists of the present era are predominantly historical and practical, and a clear style combined with scientific method makes their works, as a rule, remarkably attractive.

The best known modern Italians are Brusa, Cassanova, Carnazza-Amari, Fiore, Mancini, and Pierantoni. Their views have been greatly influenced by Mazzini's teachings on the subject of nationality, which some of them have vainly attempted to erect into a principle of international law.

The leading Spanish and Spanish-American authorities are Alcorta, Alvarez, Bello, Calvo (in 6 vols.), and Olivart.

Among authorities of other nationalities, the following appear especially worthy of mention from the standpoint of general reputation: the Belgian publicists Descamps, Laurent, Nys, Rivier, Rolin,

should perhaps be classed as a Swiss rather than a Belgian publicist, having been born in Switzerland and having served as Swiss Consul-General in Belgium, but I have classed him as Belgian because the greater part of his work was done at the University of Brussels where he was appointed to a professorship as early as 1867.

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and Rolin-Jaequemyns; the Russians F. de Martens and Kamarowsky; the Dutch Asser and Ferguson; the Scandinavian Kleen; the Austrians Lammasch and Neumann; the Portuguese Pinheiro-Ferreira and Testa; and the Greeks Saripolas and Streit.

The Japanese have also materially contributed to the science of international law. The works of Ariga and Takahashi enjoy a European and American reputation.[83]

AMOS S. HERSHEY.

[83] The most important *Forerunners of Grotius* were: 1) Alfonso the Wise, King of Castile (1252–84), who, with the aid of collaborators, compiled a mediæval code of law called the *Siete Partidas*, which contained many rules of land and naval warfare. 2) Giovanni de Legnano, professor of law at Bologna, who (in 1360) wrote the first substantive treatise upon the laws of war. His work, which was not published before 1477, was entitled *De bello, de represaliis, et de duello.* 3) Honoré Bonet, a Benedictine monk and a Provençal, the author of a remarkable book which bears the peculiar title of *L'arbre des batailes.* It was written about 1385 and contains 132 chapters on the law of warfare. This work was re-edited by M. Nys, in 1883. 4) Christine de Pisan, perhaps the first advocate of woman's rights, who was born at Venice in 1363 and was educated at the French court. Among the voluminous works of this remarkable woman, there was one entitled *Livre des faits l'armes et de chevalerie*, which is largely copied, with due acknowledgment, from the *Arbe des battailles* of Honoré Bonet. Both Bonet and Christine were far in advance of their age in humanitarian sentiments, but their works were nevertheless highly successful. 5) Bello, an Italian jurist and statesman, who published an important work entitled *De re militari et de bello* about 1558. 6) Victoria (1480–1546), a Dominican monk and professor at Salamanca, whose thirteen *Relectiones theologicæ* were first published in 1557. Two of these, the fifth entitled *De Indiis* and the sixth *De jure belli*, deal with the rights of the Indians and the laws of war. Victoria is probably the first modern thinker who conceived the idea of a society or community of nations based upon natural reason and sociability. It was Victoria who first used the phrase *jus inter gentes.* He set up the doctrine of the solidarity and *interdependence* of states and placed the rights of the Spanish in the Indies upon the natural rights of commerce and communication. 7) Ayala (1548–84), a military judge in the service of Philip II, who published a treatise in 1581 on the laws of war and military discipline. 8) The great Spanish Jesuit Suarez, who published his *Tractatus de legibus* in 1612. In a famous passage, which is translated by Westlake (see *Chapters*, pp. 26–27), Suarez for the first time clearly states the view that each state is a member of an international community or society of nations which are bound together by the necessity of mutual aid and communion. He also distinguished clearly between international law (*jus gentium*) and the law of nature (*jus naturale*). 9) Gentilis, a

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Protestant Italian jurist, who was appointed professor of civil law at Oxford in 1588. His chief work, *De jure belli*, which was published in 1598, and re-edited by Professor Holland in 1877, furnished the model and framework for the first and third books of Grotius' *De jure belli ac pacis*. Gentilis is undoubtedly the most important of the forerunners of Grotius, but lacks the idealism, passion for justice, and broad humanitarism of the latter. He is the founder of the historical school of international jurists, and is also in some other respects (as, *e. g.*, his advocacy of the rights of neutrals) in advance of Grotius.

On the *Precursors of Grotius*, see especially the voluminous researches of Nys, more particularly his *Le droit de la guerre et les precurseurs de Grotius* (1882); *Les Origines* (1894); *Etudes* (1896 and 1901), *passim;* and *Le Droit Int.*, 11, 213–232. See *Les Fondateurs de Droit Int.* (1904), ed. by Pillet for studies of Victoria, Gentilis, and Suarez. See also Holland's *Studies* (1898) and Westlake's *Chapters* (1894) for valuable studies of Ayala, Suarez, Gentilis, etc. Walker's *History* and *Science* of *Int. Law, passim; Rivier*, in Holtzendorff's *Handbuch* I, § 85; Wheaton's *History* (1845), Introduction; and Kaltenborn, *Die Vorläufer des Hugo Grotius* (1848) contain much valuable information.

On the *History of Int. Law since the Peace of Westphalia*, see especially 1 Alcorta, *Cours de droit int. pub.* (1887), ch. 6, §§ 3–4; Alvarez, *Le droit int. américain* (1910); Bax, *Essai sur l'evolution de droit des gens* (1910); De Boeck, *De la propriété ennemie sous pavillon ennemie* (1882), 1–153; Brie, *Die Fortschritte des Völkerrechts seit dem Vienna Kongress* (1890); Hosack, *Rise and Growth of the Law of Nations* (1882), chs. 8–10; Laurent, *Etudes sur l'humanité*, Vols. X–XVIII; 1 Kleen, *De la neutralité* (1898), *Introduction historique*, 1–70; Leseur, *Introduction*, §§ 41–59; 1 Mohl, *Geschichte and Litteratur der Staats-wissenschaften*, 337–475 (1885); ‡Nys, *Etudes*, esp. I, 318–406; on "*La revolution française et le droit int.;*" ‡Ompteda, *Litteratur des Völkerrechts* (1785); Pierantoni, *Die Fortschritte des Völkerrechts im XIX Jahrhundert* (1899, trans. by Scholz); ‡Wheaton, *History of the Law of Nations* (1848), *passim; ibid., Histoire des progres du droit des gens en Europe* (4th French ed. 1865).

Among the treatises which deal with the subject in a more or less satisfactory manner are ‡Bonfils-Fauchille, Calvo, Chrétien, Despagnet, Fiore, Halleck, F. de Martens, Mérignhac, ‡Nys, and Taylor.

On the history of the science of international law, see 1 Alcorta, *Cours*, ch. 7; 1 Mohl, *Geschichte und Litteratur der Staatsswissenschaften* (1885), 337–475; ‡Nys, *Le Droit Int.*, 213–328; ‡Ompteda, *Litteratur des Völkerrechts* (1785), *passim;* ‡Nys, *Notes sur l'histoire dogmatique et literaire de droit int. en Angleterre* (1888); *ibid., Les theories politiques et le droit int. en France jusqu'an XVIII siecle* (1899); *ibid., Etudes, passim; Les Fondateurs du droit int.* (1904), ed. par Pillet; Rivier in Holtzendorff's *Handbuch*, §§ 85–123; Walker, *The Science of Int. Law* (1893), *passim;* Wheaton, *History* (1848), *passim.* Among the treatise, see ‡Bonfils, Calvo, ‡Fiore, Halleck, Manning, Martens Nys, ‡Oppenheim and Taylor.

For bibliographies, see ‡Bonfils, Mohl, ‡Nys, Ompteda, ‡Oppenheim, Rivier in Holtzendorff, and ‡Olivart, *Bibliographie de droit int.*

For treaties, see the collections and summaries contained in Dumont, Flassen,

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Gardner, ‡Hertslet, Koch, ‡Martens, and the ‡*Archives Diplomatiques.* See also SUPPLEMENTS to this JOURNAL, the volumes on the Foreign Relations of the United States, published as *House Documents,* the British and Foreign State Papers, the *Partiamentary Blue Books,* and the documents published in the *Revue générale de droit int. public* and the *Zeitshrift für Völkerrecht,* etc.

The leading available periodicals on international law are as follows: *American Journal of International Law* (since 1907); *Revue générale de droit international public* (since 1894); *Revue de droit international et de legislation comparée* (since 1869); *Zeitschrift fur Völkerrecht und Bundesstaatsrecht* (since 1907); and the *Annuaire de l'Institut de Droit Int.* (since 1877).

Valuable articles and notes on international law also frequently appear in the *American Law Review,* the *Green Bag,* the *Law Quarterly Review,* the *Law Magazine and Review,* the *Journal of the Society of Comparative Legislation,* the *American Political Science Review,* the *Archiv für öffentliches Recht,* the *Annalen des deutschen Reiches,* and the *Revue de droit public et de la science politique.*

On the *jus naturale,* see Ahrens, *Das Naturrecht* (1846); ‡Bryce, *Studies,* Essay, XI, 546–606; Burlamaqui, *Principes du droit naturel* (1747), *passim;* Carlyle, *History of Mediœval Political Theory, passim;* Clark (A. I.) on "Natural Rights" in 16 *Annals of Am. Acad. Soc. and Pol. Sci.,* 212–216; ‡Dunning, *Political Theories, Ancient and Mediœval* and *From Luther to Montesquieu* (2 vols.), *passim;* Gierke, *Johannes Althusius und die Naturrechtlichen Theorien, passim;* Hibben in 4 *Int. J. of Ethics,* 133–160; Holland, *Jurisprudence* (10th ed.), 6, 30–38; Lorimer, *The Institutes of the Law of Nations* (1883), in 2 vols., *passim;* 2 Lowell, *Government of England,* 477–88; ‡Maine, *Ancient Law* (Pollock's ed.), chs. 3 and 4, and Pollock's note in Appendix; Mackintosh, *The Law of Nature and Nations* (1828) (see also his *Miscel. Works,* 27–43); Miller, *Philosophy of Law,* Appendix A, 376–83; Pollock, *Expansion of the Common Law;* Pulszky, *Theory of Law and Civil Society,* ch. 4, 77–83; ‡Ritchie, *Natural Rights,* espec. ch. 5; Rutherford, *Institutes of Natural Law* (1832, 2d Am. ed.), espec. Bk. I, chs. 1, 2 and 5, and ch. 9 of Bk. II; Salmond in 2 *Law Quarterly* (1895), 121–43; Taylor (T. W.) in 1 *Annals Am. Acad. Soc. and Pol. Sci.* (1891), 558–85; ‡Voigt, *Das jus naturale et gentium der Römer* (1856), in 4 vols., *passim;* Walker, *History, passim;* ‡Willoughby, *Political Theories,* 249 ff. and 281 ff.; *ibid., The Nature of the State,* ch. 5, 89–115.

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